

HAFETZ & NECHELES

ATTORNEYS AT LAW

500 FIFTH AVENUE
 NEW YORK, N.Y. 10110
 TELEPHONE: (212) 997-7595
 TELECOPIER: (212) 997-7646
 E-MAIL: info@hafetzlaw.com

USDS SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #:
 DATE FILED: **AUG 26 2008**

FREDERICK P. HAFETZ
 SUSAN R. NECHELES

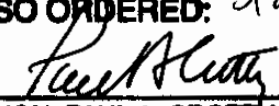
JOSHUA R. GELLER
 NOAH E. SHELANSKI
 TRACY E. SIVITZ
 FLORA TARTAKOVSKY

August 26, 2008

VIA ELECTRONIC MAIL

Honorable Paul A. Crotty
 United States District Judge
 Southern District of New York
 Daniel Patrick Moynihan
 United States Courthouse
 500 Pearl Street, Room 735
 New York, NY 10007

Application GRANTED. The conference is scheduled for
8/27/08 at 3:15pm in Courtroom 20-C.

SO ORDERED: 8/26/08

 HON. PAULA A. CROTTY
 UNITED STATES DISTRICT JUDGE

Re: United States v. James Bonczek, No. 08 Crim. 361 (PAC)

Dear Judge Crotty:

I write to request a conference with the Court tomorrow, August 27.

For three months, the defense has been attempting to get access to the hard drives seized by the government. As of today, the government still has not made the hard drives available in a format that can be examined by our computer expert. While the Court granted my request for an extension to file my reply brief by August 29, the defense is now forced to seek additional relief due to the government's continuing failure to make the evidence available for forensic examination.

The government is required by 18 U.S.C. § 3509(m) to make the evidence "reasonably available to the defendant." Regrettably, due to its initial refusal to make the evidence available for review with a Macintosh computer, and its later persisting technical problems, the government has failed to do so. Mr. Bonczek has spent approximately \$15,000 in fees to his retained computer expert, plus additional thousands in the legal fees needed for making a motion to obtain access to the hard drives with a Macintosh computer and repeated negotiations with the government to obtain computer access. All of this money has been completely wasted—to date, our experts' review has been frustrated by the government's inability to provide a functioning forensic workstation.

Despite the defense's attempts to resolve this issue with the government, the delay drags on and the expenses continue to tally. I therefore ask that the defendant's motion dated July 8 be re-opened and that the relief requested be amended so as to (1) order the government to reimburse the defendant for costs expended to date on his computer expert, and (2) provide the

MEMO ENDORSED

MEMO ENDORSED

HAFETZ & NÉCHELES

Honorable Paul A. Crotty

8/26/2008

Page 2 of 2

defendant with a copy of the seized hard drives so that the defendant's computer expert can perform an in-house forensic review.

I will be leaving town on Thursday for my sister's wedding and defendant's reply brief is due on Friday. Accordingly, I request that Your Honor schedule a conference for tomorrow or, if that is not possible, for next week. I further request that Your Honor grant an extension in defendant's time to reply to the government's opposition brief until after the conference.

I have conferred with AUSA Kasulis concerning this request. He advises that he is available at any time tomorrow except 2:30 p.m. to 3:00 p.m.

Thank you for your consideration.

Respectfully submitted,



Susan R. Necheles

SRN/jrg

cc: AUSA Telemachus Kasulis (via electronic mail)